

New York City Department of Consumer and Worker Protection

Notice of Public Hearing and Opportunity to Comment on Proposed Rules

What are we proposing? The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend its rules to include violations of Local Law 17 of 2023, which places restrictions on providing eating utensils, condiment packets, napkins, and extra eating containers to take-out customers. DCWP is also proposing a new penalty schedule to implement Local Law 39 of 2023, which creates requirements for the sale, lease, and rental of powered bicycles, powered mobility devices, and storage batteries for such devices.

When and where is the hearing? DCWP will hold a public hearing on the proposed rule. The public hearing will take place at 11:00AM on July 20, 2023. The public hearing will be accessible by phone and video conference.

- To participate in the public hearing via phone, please dial +1 646-893-7101
 - Meeting ID: 255 376 116 65
 - Passcode: jdSNiz
- To participate in the public hearing via videoconference, please follow the online link: <https://tinyurl.com/DCWP-Rules-Hearing>
 - Meeting ID: 255 376 116 65
 - Passcode: jdSNiz

How do I comment on the proposed rules? Anyone can comment on the proposed rules by:

- **Website.** You can submit comments to DCWP through the NYC rules website at <http://rules.cityofnewyork.us>.
- **Email.** You can email comments to Rulecomments@dcwp.nyc.gov.
- **By speaking at the hearing.** Anyone who wants to comment on the proposed rule at the public hearing must sign up to speak. You can sign up before the hearing by calling (212) 436-0396. You can also sign up on the phone or videoconference before the hearing begins at 11:00AM on Monday, July 20, 2023. You can speak for up to three minutes.

Is there a deadline to submit comments? Yes. You must submit any comments to the proposed rule on or before July 20, 2023.

What if I need assistance to participate in the hearing? You must tell DCWP’s External Affairs division if you need a reasonable accommodation of a disability at the hearing. You must tell us if you need a sign language interpreter. You may tell us by telephone at (212) 436-0161 or by email at Rulecomments@dcwp.nyc.gov. Advance notice is requested to allow sufficient time to arrange the accommodation. Please tell us by July 13, 2023.

Can I review the comments made on the proposed rules? You can review the comments made online on the proposed rules by going to the website at <http://rules.cityofnewyork.us/>. A few days after the hearing, all comments received by DCWP on the proposed rule will be made

available to the public online at <http://www1.nyc.gov/site/dca/about/public-hearings-comments.page>.

What authorizes DCWP to make this rule? Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter, Local Law 17 of 2023 and Local Law 39 of 2023 authorize the Department of Consumer and Worker Protection to make these proposed rules. These proposed rules were not included in the Department of Consumer and Worker Protection's regulatory agenda for this Fiscal Year because they were not contemplated when the Department published the agenda.

Where can I find DCWP's rules? The Department's rules are in title 6 of the Rules of the City of New York.

What laws govern the rulemaking process? DCWP must meet the requirements of section 1043 of the City Charter when creating or changing rules. This notice is made according to the requirements of section 1043 of the City Charter.

Statement of Basis and Purpose of Proposed Rule

The Department of Consumer and Worker Protection (“DCWP” or “Department”) is proposing to amend section 6-74 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York to include penalty amounts for violations of Local Law 17 of 2023, set forth in Section 16-402 of the Administrative Code of the City of New York, which places restrictions on providing eating utensils, condiment packets, napkins, and extra eating containers to take-out customers. Food service establishments, third-party food delivery services, and third-party courier services that violate provisions of Local Law 17 are liable for civil penalties from \$50 to \$250 per violation. These penalties are intended to decrease the amount of plastic waste generated by food service establishments while allowing customers to ask for, instead of automatically receiving, plastic utensils if they desire to use them.

DCWP is also proposing a new penalty schedule to implement Local Law 39 of 2023, set forth in Sections 20-609 and 20-610 of the Administrative Code of the City of New York, which creates requirement related to the sale, lease, and rental of powered bicycles, powered mobility devices, and storage batteries for such devices. Those who violate the provisions of Local Law 39 are liable for civil penalties from \$0 (for a first violation) to \$1000 per violation. These penalties are intended to ensure that powered bicycles, powered mobility devices, and storage batteries, which include e-bikes, e-scooters, hoverboards, e-skateboards and e-uniwheels, are safe for public use.

Sections 1043, 2203(f) and 2203(h)(1) of the New York City Charter, Local Law 17 of 2023 and Local Law 39 of 2023 authorize the Department of Consumer and Worker Protection to issue these proposed rules.

New material is underlined.

[Deleted material is in brackets.]

“Shall” and “must” denote mandatory requirements and may be used interchangeably in the rules of this department, unless otherwise specified or unless the context clearly indicates otherwise.

Proposed Rule Amendments

Section 1. Section 6-74 of subchapter B of chapter 6 of title 6 of the Rules of the City of New York is amended to read as follows:

§ 6-74 Single-Use [Beverage Plastics] Items Penalty Schedule

All citations are to Title 16 of the Administrative Code of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by admitting to the violation, being found in violation in a decision,

or entering into a settlement agreement for violating the same provision of law or rule, on a different day within twelve months of the prior violation(s).

<u>Citation</u>	<u>Violation Description</u>	<u>First Violation</u>	<u>First Default</u>	<u>Second Violation</u>	<u>Second Default</u>	<u>Third and Subsequent Violation</u>	<u>Third and Subsequent Default</u>
Admin. Code § 16-401(b)	Providing single-use plastic stirrers or single-use plastic splash sticks	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(c)(1)	Providing single-use, non-compostable plastic straws to customers without customer request (including providing such straws at a self-serve station)	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(c)(2)	Failure to maintain a sufficient supply of single-use, non-compostable plastic straws	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(c)(2)	Failure to provide a single-use, non-compostable plastic straw upon request	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(c)(2)	Charging a customer for a single-use, non-compostable plastic straw that the customer has requested or inquiring as to the reason a customer has requested such plastic straw	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(c)(3)	Failure to display required signage about plastic straw availability	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-401(d)	Providing compostable plastic straws to be used outside of the food establishment's premises; failure to appropriately dispose of compostable plastic straws; failure to maintain required bins for disposal of compostable plastic straws	\$100	\$100	\$200	\$200	\$400	\$400
Admin. Code § 16-402(b)	<u>Providing eating utensils, condiment packets, napkins, or extra eating containers without customer request</u>	<u>\$50</u>	<u>\$50</u>	<u>\$150</u>	<u>\$150</u>	<u>\$250</u>	<u>\$250</u>
Admin. Code § 16-402(c)(1)	<u>Failure to prominently and conspicuously provide customers with the option to request eating utensils, condiment packets, napkins, or extra eating containers</u>	<u>\$50</u>	<u>\$50</u>	<u>\$150</u>	<u>\$150</u>	<u>\$250</u>	<u>\$250</u>
Admin. Code § 16-402(c)(1)	<u>Default option not set to no eating utensils, condiment packets, napkins, or extra eating containers</u>	<u>\$50</u>	<u>\$50</u>	<u>\$150</u>	<u>\$150</u>	<u>\$250</u>	<u>\$250</u>

Admin. Code § 16-402(c)(2)	Providing eating utensils, condiment packets, napkins, or extra eating containers without customer request	\$50	\$50	\$150	\$150	\$250	\$250
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Section 2. A new Section 6-86 is added to subchapter B of chapter 6 of title 6 of the Rules of the City of New York to read as follows:

§ 6-86 Powered Mobility Devices Penalty Schedule

All citations are to Title 20 of the Administrative Code of the City of New York.

Unless otherwise specified, the penalties set forth for each section of law or rule shall also apply to all subdivisions, paragraphs, subparagraphs, clauses, items, or any other provision contained therein. Each subdivision, paragraph, subparagraph, clause, item, or other provision charged in the Notice of Violation shall constitute a separate violation of the law or rule.

Unless otherwise specified by law, a second or third or subsequent violation means a violation by the same respondent, whether by admitting to the violation, being found in violation in a decision, or entering into a settlement agreement for violating the same provision of law or rule, on a different day within two years of the prior violation(s).

Each failure to comply with respect to any one stock keeping unit gives rise to a separate violation of subdivision a, b, or c of § 20-610 of the Administrative Code.

Citation	Violation Description	First Violation	First Default	Second Violation	Second Default	Third Violation	Third Default	Fourth and Subsequent Violation	Fourth and Subsequent Default
Admin. Code § 20-610(a)	Distributing, selling, leasing, renting, or offering for sale, lease, or rent a non-compliant powered bicycle	\$0	\$0	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin. Code § 20-610(b)	Distributing, selling, leasing, renting, or offering for sale, lease, or rent a non-compliant powered mobility device	\$0	\$0	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000
Admin. Code § 20-610(c)	Distributing, selling, leasing, renting, or offering for sale, lease, or rent a non-compliant storage battery	\$0	\$0	\$750	\$1,000	\$900	\$1,000	\$1,000	\$1,000